IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

CRL.A.No. 52 of 2001(C)

CC.4/1998 of ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

.....

APPELLANT/1ST ACCUSED:

R.RAMACHANDRAN NAIR, FORMERLY VICE CHANCELLOR,
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT, KALADY.

BY ADV. SRI.S.SREEKUMAR

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31.1.2007 ALONG WITH CRL.APPEAL NO. 85 OF 2001, THE COURT ON 14.6.2007 DELIVERED THE FOLLOWING:

ORDER IN CRL.M.P. NO.458 OF 2001 IN CRL. APPEAL NO.52 OF 2001.

DISMISSED

14.6.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NOS. 52 & 85 OF 2001

Dated this the 14th day of June, 2007

JUDGMENT

The appellants are accused Nos.1 and 2 in C.C. No.4 of 1998 on the file of the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The appellant in Crl. Appeal No.52 of 2001 is the first accused and the appellant in Crl. Appeal No. 85 of 2001 is the second accused. The appellants along with the third accused faced trial for the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act") and Section 120-B I.P.C.

2. The charge against the accused in the above case in brief is as follows: While the first accused, appellant in Crl. Appeal No. 52 of 2001 was working as Vice Chancellor, Sree Sankaracharya University of Sanskrit, Kalady (hereinafter referred to as "the University") from 31.3.1993 to 30.6.1996, he entered into a conspiracy on 3.10.1994 with the second accused, appellant in Crl. Appeal No. 85 of 2001 and the third accused who were working as the Secretary and President respectively of

Sree Vidhyadhiraja Vidhya Samajam (hereinafter referred to as "the Samajam") and agreed to purchase land for the University from the Samajam. Pursuant to the said agreement, an amount of Rs.37,50,000/- was paid towards sale consideration for 55 cents of land by fixing the land value exorbitantly higher than the value prevalent in the locality thereby causing considerable loss to the University. Thus all the accused committed the offences as alleged. To prove the case against the accused, the prosecution examined PWs.1 to 20 and produced Exts.P1 to P64. On the side of the defence, DWs.1 to 6 were examined and Exts.D1 to D28 were produced. On closing the prosecution evidence, the accused were questioned under Section 313 Cr.P.C. Denying the entire prosecution allegation, the accused filed separate statements.

3. Relying on the evidence adduced by the prosecution, the trial court found the first accused guilty under Section 13(1)(d) read with Section 13(2) of the P.C. Act and Section 120-B I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.50,000/- for the offence under Section 13(1)(d) read with Section 13(2) of the P.C.Act and in default of payment of fine to undergo rigorous imprisonment for a further period of one year. He was also sentenced to undergo rigorous imprisonment for

one year for the offence under Section 120-B I.P.C. The substantive sentences were ordered to run concurrently.

4. The second accused was found guilty under Section 120-B I.P.C. He was convicted thereunder and sentenced to undergo rigorous imprisonment for a period of one year. The benefit of Section 428 Cr.P.C. was also allowed to the first and second accused. The third accused was found not guilty of any of the charges and he was acquitted. Now, the first and second accused have approached this Court challenging the conviction and sentence ordered against them.

5. This Court heard the learned counsel appearing for the appellants as well as the learned Public Prosecutor.

6. The learned counsel appearing for the appellant in Cr. Appeal No.52 of 2001 raised the following contentions: (i) the trial court committed serious error in accepting the evidence of the prosecution witnesses to find the appellant guilty of the offences charged against him as the evidence of those witnesses would not prove that the first accused - appellant in Crl. Appeal No. 52 of 2001 was the only officer of the University who had suggested purchase of the land in question from the

Samajam and that the first suggestion was considered by the University offering Rs.75,000/- per cent, (ii) the prosecution failed to prove that the land value offered as per the agreement was much higher than the value prevalent in the locality as there was no legally acceptable evidence showing the land value prevalent in the locality (iii) the documents produced by the prosecution, the oral evidence of PWs.2 to 5 and the documents relied on by those witnesses are not sufficient to come to the conclusion that the value offered in the agreement entered into between the University and the Samajam was higher than the land value prevalent in the locality, (iv) even if the entire evidence adduced by the prosecution is accepted, it is not possible to come to the conclusion that there was conspiracy between the first accused and the other accused to sell the property in question to the University at a higher price especially when the trial court found that there was no evidence to prove conspiracy against the third accused in which case the finding entered against the second accused - appellant in Crl. Appeal No.85 of 2001 is also not sustainable and (v) the trial court committed serious error in rejecting the evidence of the defence witnesses especially that of DW.6 (first accused) and in not accepting any of the documents produced by the defence.

7. Learned counsel appearing for the appellant in Crl. Appeal No.

85 of 2001 contended that the finding of the court below with regard to the alleged conspiracy between the first accused and accused Nos. 2 and 3 is not based on any legally acceptable evidence. Counsel further contended that the appellant was made an accused only because he was the Secretary of the Samajam and that his involvement in the alleged offence has not been proved. It is also contended by the learned counsel that to prove an offence under Section 120-B I.P.C., the prosecution must establish that the accused had either expressed or implied involvement in the commission of the offence and that he knew the consequences of the conspiracy.

8. Before analyzing the evidence adduced in this case and the conclusion arrived at by the trial court, it is advantageous to go through the prosecution case set up against the accused. The prosecution charge against the accused was that they conspired together and committed corrupt and illegal act by misusing their official position. It is the prosecution case that the first accused entered into an agreement with the second and third accused to purchase an extent of 1 acre of land comprised in Survey Nos. 1574, 1582, 1583/3, 1588 and 1602 of Manacaud Village belonging to the Samajam at the rate of Rs.50,000/- per cent whereas the market value of land in the said locality was only Rs.5650/- per cent. It is the further case of the prosecution that by entering into such an agreement,

huge loss was caused to the University with the intention of obtaining pecuniary advantages to the Samajam under which all the accused were life members. It is also the case of the prosecution that all the then existing members of the Samajam were close relations of the first accused.

9. The prosecution mainly relied on the evidence of PW.1 to prove the case against the first accused. PW.1 was the Registrar of the University during the relevant period. He was working in the said capacity on deputation since 5.10.1996. He stated before the court below that the first accused was appointed as Special Officer as per Ext.P2 order dated 15.7.1991 to set up the University and that after establishment of the University, he was appointed as the first Vice Chancellor from 31.12.1993 to 30.6.1996. This witness also stated that one K.Krishnan Nair who was working as Estate Officer was dealing with procurement and proper maintenance of landed properties and other fixed assets of the University. He further stated that while the first accused was the Vice Chancellor of the University, property was purchased for construction of Regional Centre at Thiruvananthapuram. This witness further stated that when he took charge as Registrar of the University on 5.10.1996, the file relating to the purchase of land for the Regional Centre of the University was not available at the Head Office of the University. He further stated that

Ext.P7 agreement executed between the University and the Samajam was for a period of one year and as per the records an amount of Rs.20,00,000/- was paid and the agreement was extended upto 31.12.1996 and that the value of the property as per the extended agreement was Rs.50,000/- per cent for purchase of one acre. PW.1 also stated that when Ext.P7 agreement was signed, an amount of Rs.10,00,000/- was paid to the Samajam on 3.10.1994, an amount of Rs.5,00,000/- was paid on 5.10.1994, Rs.20,00,000/- was paid on 9.10.1995 and finally Rs.2,50,000/- was paid on 25.6.1996. This is evident from Exts.P9 to P12 vouchers. Ext.P13 is the receipt for an amount of Rs.15,00,000/- signed by the second accused - appellant in Crl. Appeal No.85 of 2001. This witness also stated that the amount covered by Exts.P9 to P12 were paid at Thiruvananthapuram by Treasury payment. PW.1 further stated that though Ext.P7 agreement was for purchase of one acre of land, Exts.P19 and P20 documents show that only 55 cents of land was transferred to the account of the University and that those documents were registered without his knowledge.

10. PW.2 was working as Tahsildar of Thiruvananthapuram Taluk from 6.9.1996 to 16.4.1997. This witness stated that on the basis of the request made by the Vigilance Superintendent (Northern Range), Kozhikode, he had issued Ext.P23 letter regarding the market value of the

land in Survey Nos. 1574, 1582, 1585, 1585/3, 1588 and 1602 of Manacaud Village, the original and copy of which are Exts.P24 and 23 respectively. PW.2 further stated that the land value fixed by him was on the basis of Ext.P25 enquiry report submitted by the Revenue Inspector.

11. The Revenue Inspector was examined as PW.3. He stated that he submitted Ext.P25 report to PW.2 after conducting an enquiry regarding the market value and on perusing the documents which were registered during the relevant time. He also stated that the property was valued at Rs.5650/- per cent. PW.4 was working as the Sub Registrar, Chala during 1997. This witness stated that he had issued the attested copies of Exts.P19, P20 and P27 to P35 to the investigating officer of the case and those documents relate to registration of properties at Manacaud Village. PW.4 further stated that the documents which he produced before the investigating officer were taken into custody by the investigating officer as per Ext.P36 inventory.

12. PW.5 was working as Taluk Surveyor, Thiruvananthapuram from 1997 onwards. This witness had given evidence before the court below that he had prepared Ext.P37 plan of the property comprised in Survey Nos. 1588 and 1602 of Manacaud Village on the request made by

the investigating officer. He further stated that almost half of the property in the above survey numbers were filled with earth and that the total extent of the property would come to 75 cents. This witness also stated that he had not mentioned in Ext.P37 that there was a pathway along the property. He also admitted that he was not in a position to state the extent of the pathway and also whether the side measurements shown in the plan were correct or not. He further stated that the Village Officer was also present at the time of preparing Ext.P37 plan.

13. PW.6 was working as Village Officer, Manacaud from 1.1.1996 to 28.5.1997. He stated that he had signed Ext.P38 mahazar prepared by the investigating officer relating to the property in this case. This witness further stated that as per the earlier village records, the property covered by Ext.P38 was originally paddy lands and that at the time of preparing Ext.P38, a portion of the land was filled with earth. He further stated that as per the village records, 75 cents of land covered by Ext.P38 belonged to the Samajam.

14. PW.7 was the original owner of the property in question. He stated that he had sold the property to the Samajam as per Exts.P27 and P28 sale deeds. This witness admitted that he was in possession of the

property for more than 20 years and that he sold the property for Rs.5000/- per cent. He also admitted that when he purchased the property it was a paddy land and that he had excavated earth from the property for his brick-kiln. PW.8 was working as Deputy Collector in the Land Acquisition Wing from September, 1994 to June, 1997 and thereafter as Assistant Commissioner in the Land Revenue Commissionarate. He deposed before the court below that land acquisition proceedings for Government and quasi Governmental institutions were taken by him and that an extent of 11 hectares, 75 ares and 18 square meters comprised in 83 survey numbers situated in Manacaud Village were notified for acquisition under Section 4(1) of the Land Acquisition Act, 1894 as evidenced from Ext.P39 Gazette Notification. He also admitted that the property comprised in Survey Nos.1588 and 1602 were not included in Ext.P39 notification. This witness also stated that no land was acquired as per the above notification as the notification lapsed due to non-publication of the draft declaration under Section 6 of the Land Acquisition Act, 1894.

15. PW.9 was the Secretary of Attukal Temple Trust for the period from 1994 to 1999. He stated that in 1994, two properties measuring 4 cents and 5 cents were purchased by the Temple Trust at the rate of Rs.12,000/- per cent and that the property purchased by the University lies

adjacent to the property purchased by the Temple Trust. PW.10 was working as Deputy Collector, Land Reforms, Thiruvananthapuram from June 1996 to May, 1998. This witness stated that valuation certificate used to be issued from his section for negotiated purchase of land for public purpose. He also stated that no valuation certificate was seen issued after 1994. PW.11 was the Administrative Officer of the Samajam since July, 1988. He stated before the court below that the Samajam was registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act XII of 1955. This witness also proved Ext.P41 Articles of Association of the Samajam. He stated that accused Nos.1 to 3 were permanent members of the Samajam. This witness was also examined to prove the relationship of some of the members of the Samajam with the first accused. He also gave evidence with regard to receipt of payments as per the records maintained by the Samajam.

16. PWs.12 to 14 were examined to prove purchase of the property in question and the payments made by the University for the land involved in the case. PW.15 was the Assistant Executive Engineer attached to Attingal Building Sub Division in January, 1997. He stated that he had inspected the property comprised in Survey Nos.1588 and 1602 of Manacaud Village and prepared Ext.P47 lay out plan. This witness further

stated that as per Ext.P47, he had marked the original surface of the land and also the surface which was filled up with earth as well as the surface of the adjacent land. He also stated that he prepared Ext.P48 report showing the quantity of earth used for filling up the land and also the cost for filling up the unfilled portion. He further stated that the amount calculated was on the basis of P.W.D. rates. PW.16 who was the Senior Accountant of Thiruvananthapuram District Co-operative Bank was examined only to prove that the Samajam had paid the loan taken from the Bank. PWs.17 and 18 were examined to prove that the payments relating to the property in question were accounted by the Government. They also proved the documents pertaining to the above payments. PW.19 was examined only to prove the accounts of the University with the Canara Bank. PW.20 was the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Thiruvananthapuram since November, 1996. He registered the crime and laid the final charge before the court below. This witness has given the details of the investigation conducted and the relevant documents which he had seized from the University authorities and other officers.

17. The trial court had considered the entire evidence of the prosecution witnesses and concluded that the prosecution had succeeded in

proving the charge against the appellants in these appeals. The question to be decided in these two Crl. Appeals is whether the finding entered by the court below and the conviction and sentence ordered against the appellants are sustainable or not.

18. The main contention of the learned counsel appearing for the appellants in both the appeals is that as the prosecution had failed to prove that the property purchased for and on behalf of the University did not fetch more than Rs.5650/- per cent, the finding entered by the court below is perverse. The prosecution tried to establish that the land in question did not fetch more than Rs.5000/- and odd by relying on the evidence of PWs.2 to 9. PW.2 who was the Tahsildar, Thiruvananthapuram Taluk at the relevant time stated that as per Ext.P25 report of the Revenue Inspector, the market value of the land comprised in Survey Nos. 1574, 1582, 1585/3, 1588 and 1602 of Manacaud Village was Rs.5650/- per cent for the last quarter of the year 1994. During cross-examination, this witness had stated that Ext.P24 report submitted by him was based on the report of the Revenue Inspector and that he had not made any effort to find out whether the land value stated in the above documents were correct or not. Admittedly, none of the vendors or the vendees were questioned by this witness to find out the correctness of the land value stated in the

documents. Normally, in a case like this, it is the duty of the prosecution to prove the exact land value by examining either one the parties involved in the registration or the Registrar who had registered the document in question. Hence, the finding of the court below that the land value can be fixed at Rs.5650/- per cent on the basis of Exts.P24 and 25 reports is not based on any legally acceptable evidence. Even though PW.3, the Revenue Inspector had admitted that Ext.P25 report submitted by him was based on the documents produced before him, when cross-examined, this witness had admitted that no inquiry was made with regard to the correctness of the land value. PW.4 who was the Sub Registrar, Chala during the relevant time admitted that the documents which he had produced before the investigating officer related to paddy lands. When cross-examined, this witness admitted that "

.....

.....

.....

.....

.....

.....

.....

....."

This witness also admitted that the Government had initiated a scheme for payment of additional charge of 30% in the event of undervaluation. He was also not in a position to state whether additional charge was paid in respect of Exts.P19, P20 and P27 to 35.

19. PW.7 had admitted that he had sold the property to the Samajam for Rs.5000/- per cent and that the property was lying about 7-8 feet below the road level. This witness also admitted that when he sold the property to the Samajam, a portion of the property was filled up with earth and raised upto road level. In re-examination, this witness admitted that on raising the property to road level, it would fetch Rs.50,000/- per cent. PW.9 who was the Secretary of Attukal Temple Trust had admitted that the Trust had purchased properties during 1994 for an amount of Rs.12,000/- per cent which was far below the rate prevalent at that time as the property was offered to the Temple Trust. He also admitted that during 1994-1995 the property in the said locality where even light vehicles like mini lorries could go fetched more than Rs.50,000/- per cent.

20. On analyzing the entire evidence adduced by the prosecution, this Court is of the view that the prosecution failed to prove that the land value of the locality during the relevant time was much less than what was

offered by the University. Hence, the finding of the court below on this aspect is not sustainable.

21. The next question to be considered is whether the prosecution has succeeded in proving that the property purchased for and on behalf of the University was filled with earth after spending a huge amount from the fund of the University. In this context, the evidence of PW.15, the Assistant Executive Engineer attached to Attingal Building Sub Division in 1997 is very relevant. This witness had stated that as per the request of the investigating officer, he had prepared Ext.P47 lay out plan of the property lying in Survey Nos. 1588 and 1602 of Manacaud Village and marked the original surface of the land and also the surface which was filled up with earth. He prepared Ext.P48 report showing the quantity of earth used for filling up the land and also calculated the cost on the basis of P.W.D. rates for filling up the unfilled potion of the land. According to this witness, P.W.D. rates are much lesser than the local rates. This witness further stated that usually measurements are taken by the contractor who did the filling work and the measurements taken by the Engineer should be rechecked by his immediate superior, but in the present case no such procedure was followed. The evidence of this witness alone will not prove whether the land in question was filled up with earth or not.

PW.15 may be an experienced officer, but the rates calculated by him for filling up the land and the extent of the area filled up cannot be accepted. Even though PW.15 had inspected the land in question and prepared the lay out and plan, Ext.P47 report does not have any bearing on the prosecution case as this Court has already found that the prosecution had not succeeded in proving that the land value prevalent in the locality during the relevant time was much less than what the University had offered. The report submitted by PW.15 alone would not prove that the property purchased by the University from the Samajam would not fetch Rs.50,000/- per cent.

22. The next question to be considered in these appeals is regarding the personal interest of the first accused and the illegal gain alleged to have been obtained by him, being one of the members of the Samajam. It is an admitted fact that accused Nos.1 to 3 were life members of the Samajam. But, that by itself would not prove that the first accused had any special interest in purchasing the property for the University by using public money. In this context, the evidence of PWs.1, 11, 12, 13 and 14 are relevant. PW.1 who was the Registrar of the University during the relevant time had admitted that the University was established in 1994 and the first accused, appellant in Crl. Appeal No.52 of 2001 was appointed as

the Special Officer and the first Vice Chancellor of the University as per Exts.P2 and P3 respectively. PW.1 further admitted that being the first Vice Chancellor of the University, the first accused was empowered to purchase property for and on behalf of the University and since no property was available even after publication of notification, as evidenced from Ext.P39, the Samajam offered the property in question for a sum of Rs.50,000/- per cent. He further stated that the Estate Officer of the University was in charge of procurement and proper maintenance of landed properties and other fixed assets of the University. Ext.P7 is the agreement entered into between the University and the Samajam. This witness admitted that the entire amount was spent for purchase of the property.

23. PW.11, the then Administrative Officer of the Samajam had admitted in cross-examination that the Samajam had received the entire amount covered by Exts.P19 and P20 documents and the amount has been accounted in the account of the Samajam. It has also come out in evidence that after purchasing the land from PW.7, the land was entrusted to two contractors for filling work. PW.12 who was a witness to Exts.P19 and P20 admitted that during 1994 at the time of establishment of the University, the original office of the University and that of the Vice

Chancellor were at Thiruvananthapuram and that the first accused, being the first Vices Chancellor was empowered to purchase property for and on behalf of the University. The evidence of PWs.13 and 14 would also show that the amount spent for purchase of the property in question was accounted in the account of the Samajam. That being so, the first accused cannot be said to have had any special interest in the purchase of the property in order to obtain any illegal gain as one of the members of the Samajam. There is no evidence to show that the first accused had purchased the property in violation of any of the rules of the University or in violation of the provisions of the Kerala Land Acquisition Act, 1894 or any other rules relating to purchase of property for public purpose. In the above circumstances, it cannot be said that the first accused, appellant in Cr. Appeal No.52 of 2001 committed offence punishable under Section 13 (1)(d) read with Section 13(2) of the P.C. Act. Hence, the finding entered by the court below on this aspect against the first accused has to be set aside.

24. Yet another question to be considered in these appeals is whether the appellants and the third accused had entered into a conspiracy to commit the offences alleged against them. In this context, the learned counsel appearing for the appellants contended that to prove a charge

under Section 120-B I.P.C., the prosecution should establish that the accused entered into a conspiracy by adducing legally acceptable evidence or any other circumstance which warrants conviction under Section 120-B I.P.C. In this context, the judgment of the Apex Court reported in **Purushothaman v. State of Kerala, , 2005(4) K.L.T. 842 (SC)** is relevant. In the above judgment, the Apex Court held that mere knowledge or discussion of a plan involved in the alleged conspiracy would not constitute an offence punishable under Section 120-B I.P.C. In the case in hand, no oral or documentary evidence has been adduced by the prosecution to come to the conclusion that the first accused conspired with accused Nos.2 and 3 to purchase the property in question for and on behalf of the University so as to obtain any illegal gain for the Samajam or loss for the University. That apart, the prosecution case was that the Samajam had offered the property in question to the University for an exorbitant price than what was prevalent in the locality. If that be so, the Samajam ought to have been made a party in the prosecution charge. The Samajam is not a party in the case. The court below also found that there was no evidence to connect the third accused in the alleged offence and he was acquitted. As per the principles laid down by the Apex Court in the decision referred to above, the burden is on the prosecution to prove conspiracy from each of the circumstances in the chain of events. This

Court has already found that there is no circumstance proved by the prosecution to show that the first accused had conspired with accused Nos.2 and 3 to purchase the property involved in the case. Mere suspicion cannot be taken as a legal proof and the prosecution is required to prove each and every circumstance in the chain of events. In the above circumstances, this Court is of the view that the finding of the court below that the appellants herein committed offence punishable under Section 120-B I.P.C. is not based on any legally acceptable evidence.

25. In the light of the discussions made and the findings entered in this judgment, this Court is of the view that the judgment of the court below is not sustainable. The prosecution failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the conviction and sentence ordered against the appellants in these appeals are set aside and the appellants are acquitted of the charges levelled against them.

The Crl. Appeals are allowed as above.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NOS.52 & 85/2001

JUDGMENT

14TH JUNE, 2007.